

MuckRock News
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U.S. Army Medical Research and Materiel Command
FOIA Office
810 Schreider Street
Frederick, MD 21702-5000

March 28, 2019

This is a follow up to request number FP-19-0010:

CDR U.S. Army Medical Command
Attention: Freedom of Information/Privacy Acts Office (MCPA)
2748 Worth Road
JBSA, Fort Sam Houston, Texas 78234-6021

Re: Freedom of Information Act Appeal, #FA-19-0010

Dear Freedom of Information Office Staff,

This is an appeal under the Freedom of Information Act.

My original FOIA request, made December 11, 2018 to the US Army Medical Research and Materiel Command (USAMRMC), and assigned the above-referenced internal tracking number, was for "Copies of all purchase orders, contracts, records, and related correspondence between USAMMDA or other subordinate activity of USAMRMC, and 60 Degrees Pharmaceuticals or any intermediate wholesaler or distributor, for supplies of tafenoquine (Arakoda) intended for U.S. military use, from 2013 to the date of processing of this request".

In response to this request, on March 5, 2019, I received a heavily redacted copy of a 3-page document titled "Arakoda (Tafenoquine) Transition Planning Meeting Agenda". The document was redacted under FOIA exemptions b(4), b(5), and b(6). Both the acknowledgment letter and the redacted document are attached to this appeal for your office's review, together with USAMRMC's explanation for the redactions.

In this appeal, I am requesting the release of an unredacted copy of this document, as USAMRMC's claimed reasons for the redactions are without merit, and disclosure of the unredacted document is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

USAMRMC has claimed exception (b)(4), which it claims "[p]ermits the withholding of records related to trade secrets and other confidential business information". Several of the document's redactions under (b)(4) are clearly dates which are in the past; a trade name (likely "Arakoda", a name that is not a trade secret), or refer to information that 60P has already publicly announced, including the product's logistian. There is no convincing or compelling rationale to withhold this information under the (b)(4) exemption, given that this information does not meet the definition of a "secret". Furthermore, given that 60P is the

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exclusive provider of this product to the U.S. Army, and as both USAMRMC and 60P have argued that tafenoquine is unique, the information withheld under (b)(4) cannot be considered "commercially valuable", as it cannot give 60P a "competitive advantage... over competitors", given that there are no competitors to this product.

USAMRMC has also claimed exception (b)(5), which it claims "[p]ermits the withholding of records under the deliberative process privilege". An agency withholding information under this exemption must prove that this information is "predecisional and deliberative". Several of the document's redactions under the (b)(5) exemption include, by obvious context, such information as dates and meeting locations which clearly do not meet the burden of proof required of this exemption. This calls into question the reasonableness of the other redactions in this document under this claimed exemption.

USAMRMC has also claimed exception (b)(6), which it claims "[p]ermits the government to withhold information about individuals when the disclosure would constitute a clearly unwarranted invasion into the personal privacy of a third person". Several of the document's redactions under the (b)(6) exemption include the names of participants at the meeting in question. Courts have found that the FOIA statute "does not categorically exempt individuals' identities... because the 'privacy interest at stake may vary depending on the context in which it is asserted'" (See: People for the Am. Way Found. v. Nat'l Park Serv., 503 F.Supp.2d 284, 304 (D.D.C. 2007) (quoting Judicial Watch, Inc. v. Food & Drug Admin., 449 F.3d 141, 153 (D.C. Cir. 2006))). In this particular context, the public has a compelling and overriding right to know the identities of key military and industry figures involved in the agenda items which are the subject of the document.

Thank you for your consideration of this appeal.

Sincerely,

Dr. Remington Nevin

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